



COUNTRY REPORT: PEOPLE'S REPUBLIC OF CHINA Water and Soil Conservation Law

Liu Nengye^{*}

Introduction

Soil erosion is a serious problem in China. The Second National Telemetry survey (2000) found that 3.56 million square meters of land under China's jurisdiction (37.1 percent) suffers from soil erosion. This includes 1.65 million square meters of water-eroded areas and 1.91 million square meters of wind-eroded areas. It is estimated that the annual economic loss from soil erosion is around 2.25 percent of China's GDP. A recent example is the mudslide in Zhouqu, Gansu Province on 8 August 2010 which led to a death toll of 1478. The Chinese Government has assessed the economic loss from this disaster to be around 400 million Chinese Yuan.

The State Council of China issued its first *Regulation on Water and Soil Conservation* in 1982. The Regulation was replaced by the *Water and Soil Conservation Law (WSCL)* in 1991. Twenty years on, the WSCL does not adequately address current issues of soil erosion in China. The Ministry of Water Resources of China commenced revision of the WSCL in 2005. On 25 December 2010, the National People's Congress adopted the amendments to the WSCL. The new WSCL entered into force on 1 March 2011. This country report discusses these amendments and their legal implications.

^{*} PhD Candidate, Department of Public International Law, Ghent University, Belgium. E-mail: nengye.liu@gmail.com.

The 2011 Water and Soil Conservation Law of the P. R. China

The new *WSCL* contains seven chapters with 60 clauses. The chapters come under the following headings: (1) General Principles; (2) Planning; (3) Prevention; (4) Rehabilitation; (5) Monitoring and Supervision; (6) Liabilities; and (8) Miscellaneous. Chapter 2 is a completely new chapter, which aims to provide better planning measures for water and soil conservation in China. The amended legislation contains major developments which are intended to strengthen planning, prevention, rehabilitation, monitoring and supervision of water and soil conservation.

Planning

As mentioned above, there is a new planning chapter in the *WSCL*. This chapter requires the central and regional government to conduct regular soil erosion investigations.¹ Regional government is obliged to designate soil erosion Key Prevention Areas and Key Rehabilitation Areas.² The Water Resources Department of regional government is appointed as the competent department for water and soil conservation planning. The legislation also requires the Water Resources Department to work with other relevant departments.³

Chapter 2 provides detailed planning requirements. Contents of the planning must include: the situation of soil erosion; different soil erosion areas; and water and soil conservation objectives, tasks and measures. There are two types of planning (general planning and specific planning). The legislation requires that Water and Soil Conservation planning be coordinated with general land-use planning, water resources planning, urban and rural planning and environmental planning.⁴ In addition, if the planning of infrastructure, mining, urban construction and public service may cause soil erosion, preventive and rehabilitation measures should be included in the planning procedures following consultation with the Water Resources Department.⁵

¹ Article 12.

² Ibid.

³ Article 14.

⁴ Article 13.

⁵ Article 15.

Prevention

The new *WSCL* pays particular attention to water and soil conservation in special areas. The amended legislation requires construction that might result in soil erosion be limited or prohibited in ecologically vulnerable areas as well as areas with serious soil erosion.⁶ Reclamation of hillsides with a slope of over 25 degrees for cultivation of crops is forbidden. Cultivation of economic forestry is allowed only under the condition that measures are taken to prevent soil erosion.⁷ Stripping vegetation and digging up tree stumps in soil erosion Key Prevention Areas and Key Rehabilitation Areas are banned.⁸ Furthermore, Article 21 prohibits *fa cai*⁹ collection.

The new *WSCL* provides preventive measures for soil erosion caused by construction projects. Construction projects are required to avoid soil erosion in Key Prevention Areas and Key Rehabilitation Areas. Where such avoidance is impossible, a higher standard of preventive measures shall be applied to construction projects that occur in these special areas.¹⁰ A Water and Soil Conservation Plan is necessary for construction projects in mountainous, hilly and sandstorm areas.¹¹ The plan must include the following components: objectives, applicable scope, measures and investment.¹² An approved plan is a pre-condition for commencing construction projects.¹³ Waste sands, rocks, earth, tailings and residues created by construction projects shall be recycled.¹⁴ Further, if wastes cannot be utilized, they must be disposed of in a specially designated area.¹⁵ Moreover, the new *WSCL* obliges owners and users of water and soil conservation facilities to strengthen the management and maintenance of these facilities and ensure the proper function of these facilities.¹⁶

⁶ Article 17.

⁷ Article 20.

⁸ Article 21.

⁹ The last two syllables of this name in Cantonese sound the same as another Cantonese saying meaning 'struck it rich'. The huge need of *fa cai* in Chinese market caused the 'fa cai rush' in Inner Mongolia province, which almost destroyed the ecosystem of several grasslands and caused serious soil erosion. See further: http://en.wikipedia.org/wiki/Fat_choy.

¹⁰ Article 24.

¹¹ Article 25(1).

¹² Article 25(2).

¹³ Article 26.

¹⁴ Article 25.

¹⁵ Article 28.

¹⁶ Article 24.

Rehabilitation

The new *WSCL* encourages enterprises and individuals to contribute to the rehabilitation of soil erosion. The rehabilitation of soil erosion on barren hills, valleys, hillocks and desolated beaches will be supported by government funding and tax relief.¹⁷ There are however, no further details on how this scheme would operate. The legislation does require that soil erosion caused by construction projects must be rehabilitated and there exist specific requirements for the protection of soil during construction projects.¹⁸ The new *WSCL* creates a 'soil and water conservation compensation fee', which will be applied to construction projects when rehabilitation is not possible.¹⁹

Government responsibilities for rehabilitation are emphasized in the new *WSCL*. Regional government is responsible for enhancing the management of soil and water conservation projects.²⁰ Furthermore, more investment is to be made for the prevention and rehabilitation of water and for soil conservation in the source basins of rivers as well as drinking water protected areas. A water and soil conservation ecological benefits compensation fund is incorporated into the national ecological benefits compensation fund.²¹ In addition, more detailed rehabilitation measures are provided for water-eroded areas and wind-eroded areas, which include compelling regional governments to play a leading role to rehabilitate soil erosion.²²

Monitoring and Supervision

The Water Resources Department of the central government is required to improve the National Water and Soil Conservation Monitoring Network.²³ Since the entry into force of the new *WSCL*, it is now the responsibility of national and provincial water resources departments to regularly publish the results of monitoring. Article 42 also requires that information on impacted areas, changing situations, damage, as well as soil erosion prevention and rehabilitation measures are published. The staff of

¹⁷ Article 33.

¹⁸ Article 38.

¹⁹ Article 32.

²⁰ Article 30.

²¹ Article 31.

²² Article 35.

²³ Article 40.

the Water Resources Department is authorized to take measures such as conducting on-site investigations and detaining illegal construction machines.²⁴

Construction companies responsible for large or medium size construction projects that may cause soil erosion must monitor and report soil erosion themselves (no clear definition of “large” or “medium” is provided in the *WSCL*). If the construction company is not able to do the job, it can delegate the monitoring work to qualified institutions. The construction company and qualified institutions must follow national technical standards, rules and procedures in the process.²⁵

Where disputes that concern soil erosion arise between different administrative areas, regional governments must first negotiate with each other to solve the problem. If the issue cannot be resolved, the dispute will be decided by the higher level government.²⁶

Legal Implications

The new *WSCL* is much improved in comparison to its 1991 predecessor. However, in order to achieve better water and soil conservation, the implementation and enforcement of the new *WSCL* needs further attention. The new legislation requires the Chinese Government at both central and regional levels, to play a leading role in combating soil erosion. The Government is granted too much power. The question of governmental supervision remains. Issues left unresolved by the new *WCSL* include the lack of an independent body to hold government institutions accountable if they fail in their obligations under the *WCSL*. Article 47 of the new *WSCL* does provide that responsible staff of the Government may be punished by higher level government if they are not doing their job. It does not address the issue of whether the Government can be sued by enterprises or individuals under the new legislation. Public participation has long been known as an incentive for action by government but this aspect is missing in the new *WSCL*. The role of individuals and enterprises in water and soil conservation is limited in the new *WSCL* to invest or participate in rehabilitation.²⁷

²⁴ Article 44.

²⁵ Article 41.

²⁶ Article 46.

²⁷ Article 30.

Conclusion

Following the entry into force of the new *WSCL*, in theory China has better legal tools to cope with its serious soil erosion problems. It is true that the new *WSCL* has greatly improved in four aspects: planning, prevention, rehabilitation as well as monitoring and supervision. Practical questions remain over the implementation and enforcement of the legislation. One example is the absence of the public participation within the new *WSCL*. As a result, it is unclear how the Government will be held accountable if it fails its obligations under the legislation. Comparative studies of soil and water conservation legislation and cross-institutional learning with other jurisdictions on issues of implementation have the potential to provide better outcomes for soil and water conservation in China.